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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/721,603

11/25/2003

Bernard O. Geaghan

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02/10/2009

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EXAMINER

NGUYEN, JIMMY H

ART UNIT

PAPER NUMBER

2629

NOTIFICATION DATE

DELIVERY MODE

02/10/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/721,603	Applicant(s) GEAGHAN ET AL.	
	Examiner JIMMY H. NGUYEN	Art Unit 2629	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Jimmy H Nguyen/
 Primary Examiner, Art Unit 2629

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that in the case (i), when the tip portion 22 is NOT in contact with an input surface and switch 21s is ON, the red LED provides a maximum light output and the stylus emits a combination of green and red light. See pages 5-6 of the amendment, specifically page 6, lines 17-19 and page 7, lines 1-2. Examiner assumes the Applicant is correct. Applicant goes on and argues that in operating from case (i) to case (ii), since there is no abrupt change from red to blue or vice versa, thus there is no abrupt change in the light beam when the tip of the stylus sufficiently contacts the input surface (see page 7, lines 2-12). Examiner disagrees because claim 1 does not require "abrupt change from red to blue". Further, claim 1 requires "abrupt change in LIGHT BEAM when the tip of the stylus sufficiently contacts the input surface". As asserted by Applicant, the Ogawa stylus emits a combined/mixed light beam including green and maximum red in the case (i) (see the amendment, page 6, lines 17-19 and page 7, lines 1-2) and emits a combined/mixed light beam including red and blue in the case (ii) (see the amendment, page 7, lines 2-5). Note that a (green and red) color of the combined/mixed light beam in the case (i) is apparently different from a color (blue and red) of the combined/mixed light beam in the case (ii).

Further, note that in case (ii) or (iii), a color of a combined/mixed light beam can be varied differently. For example, in case (ii), when the stylus is brought into contact with the input surface with a minimum pressure such that the blue LED does not emit or emit with a minimum blue light and the red LED emits with maximum red light, a light beam emitted from the stylus has maximum red and minimum blue. Still in the case (ii), when the stylus is abruptly brought into contact with the input surface with a maximum pressure such that the red LED does not emit or emit with a minimum red light and the blue LED emits with maximum blue light, a light beam emitted from the stylus has maximum blue and minimum red.

For the above reasons, the rejections in the Final Office Action dated 11/28/2008 are maintained.